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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

**JOEL TAFOYA PEREZ, on behalf of  
himself and all others similarly  
situated,**

**Plaintiff,**

**v.**

**MIDDLE EAST BAKERY, INC. d/b/a  
JOSEPH'S BAKERY**

**Defendant.**

**CASE NO.:**

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Joel Tafoya Perez, on behalf of himself and all others similarly situated (“Plaintiff”), by and through his undersigned counsel, states for his Complaint against Middle East Bakery, Inc. d/b/a Joseph’s Bakery (“Joseph’s Bakery”), as follows:

### **PRELIMINARY STATEMENT**

1. This action seeks to redress the false, misleading, and deceptive advertising and packaging claims that Joseph’s Bakery makes in connection with the sale of its whole wheat bread products (i.e., lavash, pita, and wraps), none of which contain even a fraction of the protein they prominently advertise to unsuspecting consumers on the front of their packaging.

2. In an increasingly health-conscious market, unscrupulous food manufacturers hope to differentiate their products by deceptively marketing them as containing a significant amount of protein per serving. Seeking to exploit the market trend and to offer consumers more than just empty carbohydrates, Joseph’s Bakery markets its best-selling lavash and pita products as containing “6g Protein,” while its wraps purport to offer consumers “7g Protein” per serving:



*Lavash Bread*



*Wraps*



*Pita Bread*

3. Despite prominently advertising on the front label of its lavash, wraps, and pita bread products, in addition to its [Mini Pita Bread](#), [Mini Pita Snacks](#), [Multigrain Wraps](#), and [Original Wraps](#), (the “Class Products”)<sup>1</sup> that they contain a specific amount of protein, the nutritional panel on the back of the packaging for each product glaringly fails to disclose the daily value of protein that consumption of the product will actually provide:



4. The Food and Drug Administration (“FDA”) prohibits a manufacturer from advertising protein content on the front label of a food product *unless* the nutritional fact panel on the back label also discloses the amount of protein as a percentage of daily value. *See* 21 C.F.R. §§ 101.9(c)(7)(i), 101.13(b), (n).

<sup>1</sup> All Class Products referenced in this Complaint make specific protein claims without disclosing the adjusted protein content in the nutritional fact panel, expressed as a percentage of daily value. However, upon information and belief, the products whose images are incorporated are the best-selling in the line of products that contain misleading protein claims.

1           5. As California District Courts have recognized, “protein is essential for a  
2 healthy diet, and consumers often pick products based on their protein content ... but  
3 not all protein is created equal: *protein quality matters just as much as quantity*.” See  
4 *Rausch v. Flatout, Inc.*, 2023 U.S. Dist. LEXIS 39231, at \*2-3 (N.D. Cal. Mar. 8,  
5 2023) (emphasis added).

6           6. “When [protein is consumed, the body] breaks it down into its constituent  
7 parts—known as amino acids—and then uses those amino acids to make other  
8 proteins necessary for the body to function. To complete that process, the body must  
9 have access to nine different amino acids. If one amino acid is lacking, protein  
10 synthesis won't occur. High-quality proteins contain all nine amino acids in the right  
11 proportions for protein synthesis. A protein might additionally be lacking because it's  
12 not fully digestible. For instance ... most plant proteins are only 85% digestible, so  
13 15% of the protein from a plant source will just pass through your body.” *Id.*

14           7. “If a product makes a ‘protein claim’ anywhere ... on its label—for  
15 instance, ‘Excellent source of protein!’ or even just ‘20g of protein’—the FDA  
16 requires the manufacturer to include additional information on the nutrition facts  
17 panel: The manufacturer can still list the grams of protein unadjusted for the protein's  
18 quality, but they must also include the ‘corrected amount of protein per serving,’  
19 expressed as a percent of daily value.” *Id.* (citing § 101.9(c)(7)(i)).

20           8. “The corrected amount of protein is the quantity of protein multiplied by  
21 the ‘amino acid score’ a discount factor that accounts for the protein's amino acid  
22 content and digestibility.” *Id.* (citing § 101.9(c)(7)(ii)). “That ‘corrected amount’ is  
23 then divided by 50g (the amount of protein that the FDA estimates adults should eat  
24 every day) to give ... the percent daily value.” *Id.* (citing § 101.9(c)(7)(iii)).

25           9. Here, as depicted above, Joseph’s Bakery prominently emblazons its  
26 lavash bread, wraps, and pita bread products with a very visible and unmistakable  
27 protein claim (i.e., “6g Protein” or “7g Protein”) while omitting, as required, the  
28 adjusted daily value of protein on the nutritional panel on the back label.

1           10. The average consumer mistakenly believes the protein in Joseph's  
2 Bakery products is 100% digestible. Specifically, the lavash bread and pita bread,  
3 with "6g Protein" would be believed to provide a consumer with 12% of their daily  
4 value of protein per serving. Under the same assumption, the wraps with "7g Protein"  
5 would be believed to provide a consumer with 14% of their daily value of protein.

6           11. However, none of Joseph's Products contain 100% digestible protein. All  
7 three products largely consist of whole wheat flour by weight. Whole wheat flour, the  
8 primary ingredient,<sup>2</sup> has an amino acid score of .53 and is widely understood to be a  
9 low quality protein.<sup>3</sup> Given that whole wheat is such a poor source of necessary amino  
10 acids needed for the body to re-assemble proteins after digestion, consumers that  
11 purchase these products are obtaining approximately half of the advertised protein per  
12 serving.

13           12. To calculate the amount of protein actually contained in the lavash and  
14 pita bread, 6g of protein must be multiplied by the whole wheat amino acid score of  
15 .53 and then divided by 50 (the recommended daily value of protein measured in  
16 grams). For the lavash and pita bread, which are both advertised as containing "6g  
17 Protein," the products actually offer consumers approximately 3g of protein per  
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22 <sup>2</sup> Ingredients on a nutritional fact panel are required by the FDA to be listed in  
23 descending order based on the predominance of weight, with whole wheat being the  
24 second product listed in each of three products, after water. (see  
25 [https://www.fda.gov/food/food-additives-and-gras-ingredients-information-](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients#:~:text=On%20a%20product%20label%2C%20the,by%20those%20in%20smaller%20amounts.)  
26 [consumers/types-food-ingredients#:~:text=On%20a%20product%20label%2C%20the,by%20those%20in%20smaller%20amounts.](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients#:~:text=On%20a%20product%20label%2C%20the,by%20those%20in%20smaller%20amounts.)

27 <sup>3</sup> <https://www.2000kcal.cz/lang/en/values/wheat-flour-whole-grain-1382>  
28



1 serving.<sup>4</sup> Likewise, Joseph's Bakery wraps, which are advertised as offering "7g of  
2 Protein," only offer approximately 3.5 grams of protein per serving.<sup>5</sup>

3 13. Here, Joseph's Bakery deliberately conceals the adjusted daily value of  
4 protein from consumers in order to deceive them into believing that they are  
5 consuming more protein, and a more nutritious product, than they actually are. As a  
6 result, Plaintiff and the Class have commenced this action to redress Defendant's  
7 unlawful conduct.

### 8 PARTIES

9 14. Plaintiff Joel Tafoya Perez is a resident of Moreno Valley, California.

10 15. Defendant Middle East Bakery, Inc., d/b/a Joseph's Bakery is a  
11 Massachusetts corporation with its principal office address located at 30 International  
12 Way, Lawrence, Massachusetts 01843.

### 14 JURISDICTION AND VENUE

15 16. This Court has subject matter jurisdiction over this action pursuant to the  
16 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (1) the amount in  
17 controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and  
18 costs, and (2) the named Plaintiff and Defendant are citizens of different states. 28  
19 U.S.C. § 1332(d)(2)(A).

20 17. The Court also has jurisdiction over this action pursuant to 28 U.S.C. §  
21 1332(a), as the parties are diverse and the amount in controversy exceeds the requisite  
22 threshold.

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24 <sup>4</sup> Thus,  $6g \times .53$  (amino acid score) = 3.18. Then  $3.18/50$  (daily grams of protein).  
25 The quotient  $.0636 \times 100 = 6.36\%$ . Finally,  $6.36\%$  of 50 grams per day yields only **3.18**  
26 **grams** of digestible protein.

27 <sup>5</sup> Likewise,  $7g \times .53 = 3.71$ ;  $3.71/50 = .0742$ ;  $.0742 \times 100 = 7.42\%$ ;  $7.42\%$  of 50  
28 grams per day yields **3.71 grams** of adjusted protein.

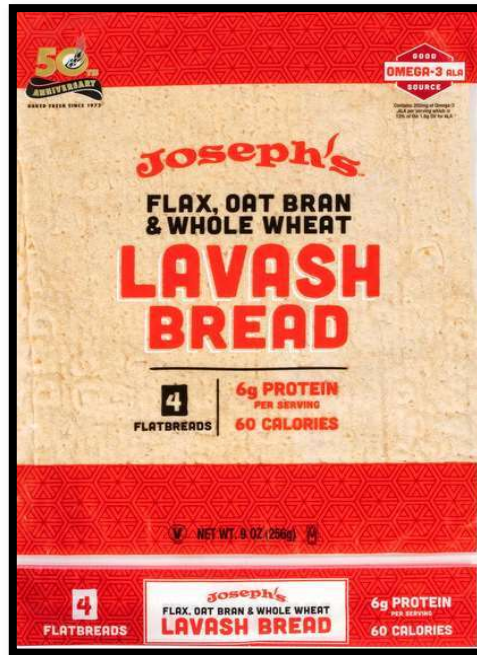
1           18. This Court may exercise jurisdiction over Defendant because Defendant  
2 has sufficient minimum contacts in California and purposely avails itself of the  
3 markets within California through the promotion, sale, marketing, and distribution of  
4 its products, thus rendering jurisdiction by this Court proper and necessary.

5           19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because  
6 a substantial part of the events giving rise to Plaintiff's claims occurred within this  
7 judicial district and because Defendant has marketed and sold the products at issue in  
8 this action within this judicial district and has done business within this judicial  
9 district.

### 10                                   **FACTUAL BACKGROUND**

11           20. Defendant manufactures, distributes, markets, advertises, and sells a  
12 variety of food products under the brand name "Joseph's Bakery." Specifically,  
13 Defendant's lavash, wraps, and pita bread products are sold with packaging that  
14 predominantly, uniformly, and consistently states on the front product labels that the  
15 products contain a certain amount of protein per serving (i.e., "6g Protein" or "7g  
16 Protein").

17           21. The representation that the Class Products contain and provide a specific  
18 amount of protein per serving when consumed was uniformly communicated to  
19 Plaintiffs and every other person who purchased any of the products in California. The  
20 same or substantially similar product label appears on each product, as seen below:  
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22. In contravention of FDA regulations, the nutritional fact panel on the back of the Class Products uniformly and consistently omits the required corrected amount of protein per serving, expressed as a percentage of daily value:





1           23. Defendant's advertising and labeling of the Class Products as containing  
2 and providing a specific amount of protein, as depicted on the front label, is unlawful,  
3 misleading, and intended to induce consumers to purchase the products at a premium  
4 price, while unquestionably failing to provide the protein advertised in a digestible  
5 form.

6           24. The front label of the Class Products is decidedly misleading since  
7 Defendant has failed to calculate the corrected amount of protein per serving based on  
8 the Class Products' amino acid score and because the corrected amount of protein as a  
9 percentage of daily value is not listed on the back of the products' nutritional fact  
10 panel.

11           25. The Class Products' labeling is deceptive and misleading because  
12 reasonable consumers purchasing the products believe that a single serving will  
13 provide them with the specific grams of protein as advertised on the front label when,  
14 in fact, given the Class Products' low amino score (on account of whole wheat being a  
15 low quality source of protein), the amount of protein provided to consumers is  
16 approximately half of that which is advertised.

17           26. Had Defendant properly followed FDA regulations by disclosing the  
18 corrected amount of protein per serving on the nutritional fact panel, Plaintiff and all  
19 members of the putative class would have known that the Class Products provided far  
20 less protein than claimed. Had Plaintiff and members of the class been provided with  
21 the corrected amount of protein per serving, they would not have purchased the  
22 products or, alternatively, would not have paid the premium charged.

23  
24 **I. The Demand for Protein Rich Foods Among Consumers**

25           27. American consumers, now more than ever, are increasingly seeking  
26 healthy and affordable food options that include, among other necessary nutrients,  
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1 reliable sources of protein.<sup>6</sup> Nearly a third of consumers studied in 2022 have stated  
 2 that dietary protein has become more important to them.<sup>7</sup> Indeed, as Americans have  
 3 returned to the office following the era of COVID-19 restrictions, the demand for  
 4 time-saving, protein-rich meals has increased substantially.<sup>8</sup>

5 28. This shifting dietary emphasis toward high-protein low-carbohydrate  
 6 foods has significantly impacted the bread industry. Consumer aversion to empty  
 7 carbohydrates, coupled with rising global wheat prices, has created a crisis in the  
 8 bread industry. As reported in Bloomberg:

9  
 10 The nearly \$50 billion US bread industry was already facing  
 11 the threat of shifting consumer tastes, thanks to the increasing  
 12 popularity of gluten-free diets, according to research  
 13 IBISWorld. Now there are worries that these price hikes help  
 14 usher in another boom in carb cutting like the South Beach  
 15 Diet craze of the early aughts. Meanwhile, restaurants may  
 16 offer less free table bread or slash portions. The price for a  
 17 pound of white bread in the US hit a record \$1.69 in June, a  
 18 12% jump from a year earlier. Meanwhile, wheat bread also  
 19 hit an all-time high of \$2.22 a pound.<sup>9</sup>

20 29. Accordingly, rebranding products like bread, to claim that they contain  
 21 benefits which they do not, like high protein, has become an existential priority.  
 22 Whipsawed between rising wheat prices and reduced demand, the unscrupulous in the  
 23 bread industry resorted to the marketing refuge of the desperate deception.

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24 <sup>6</sup> [https://www.foodnavigator-usa.com/News/Promotional-Features/The-Future-  
 25 of-Protein-5-Key-Trends-for-  
 26 2023#:~:text=The%20research%20shows%20that%20consumer,course%20of%20the  
 27 %20last%20year.](https://www.foodnavigator-usa.com/News/Promotional-Features/The-Future-of-Protein-5-Key-Trends-for-2023#:~:text=The%20research%20shows%20that%20consumer,course%20of%20the%20last%20year.)

28 <sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> [https://www.bloomberg.com/news/articles/2022-07-18/inflation-2022-rising-  
 food-prices-has-sticker-shocked-america-changing-diet?leadSource=uverif...](https://www.bloomberg.com/news/articles/2022-07-18/inflation-2022-rising-food-prices-has-sticker-shocked-america-changing-diet?leadSource=uverif...)

1 Defendant's website even contains the half-aspirational, half-entreaty, "**HAVE**  
2 **BREAD AGAIN!**" (emphasis in original).

3 30. Additionally in the global market, there is a marked shift in demand  
4 among consumers from animal proteins to plant-based protein alternatives, including  
5 baked goods and breads.<sup>10,11</sup> Naturally, food manufacturers seeking to exploit the  
6 growing trend are increasingly marketing their bread products as being rich in protein,  
7 in addition to containing other essential nutrients.<sup>12</sup>

8 31. Unfortunately, in seeking to rebrand their otherwise ordinary offerings as  
9 a "health" food, manufacturers often skirt the law by making false claims about the  
10 protein content in their products and by deliberately failing to disclose to consumers  
11 that protein digestibility varies immensely depending on the *source* of that protein.<sup>13</sup>

12 32. With protein content being ranked as second only to taste in the eyes of  
13 the average consumer, unscrupulous food manufacturers understand that marketing  
14 their products as being rich in protein, even if they are not, is an easy way to increase  
15 sales.<sup>14</sup> This leaves consumers in the dark because, despite the ubiquity of  
16 advertisements and claims that products contain a specific amount of protein per  
17 serving, many manufacturers hide the fact that their "raw" protein numbers (i.e., the  
18 protein in the product prior to consumption) are essentially meaningless since the  
19 human body's process of digestion and protein synthesis yields a net protein quantity  
20 that is often but a fraction of the advertised figures.

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23 <sup>10</sup> [https://www.bakingbusiness.com/articles/57407-plant-proteins-grow-in-](https://www.bakingbusiness.com/articles/57407-plant-proteins-grow-in-popularity-options-for-bakers)  
24 [popularity-options-for-bakers](https://www.bakingbusiness.com/articles/57407-plant-proteins-grow-in-popularity-options-for-bakers)

25 <sup>11</sup> <https://www.mdpi.com/2304-8158/11/9/1185>

26 <sup>12</sup> <https://www.shape.com/healthy-eating/diet-tips/high-protein-bread>

27 <sup>13</sup> [https://truthinadvertising.org/articles/catrends-false-and-misleading-protein-](https://truthinadvertising.org/articles/catrends-false-and-misleading-protein-claims/)  
28 [claims/](https://truthinadvertising.org/articles/catrends-false-and-misleading-protein-claims/)

<sup>14</sup> *Id.*

## II. The Process of Protein Synthesis

33. Amino acids are molecules that are used by the human body to synthesize proteins necessary to maintain normal bodily functioning.<sup>15</sup> Nine of these amino acids are called “essential amino acids,” and must be obtained from food consumption as the human body cannot produce them on its own (i.e., histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan, and valine).<sup>16</sup>

34. A healthy balance of such amino acids is needed for the human body to grow and repair body tissue, make hormones and neurotransmitters, maintain the structure of skin, hair, and nails, build muscle, bolster the immune system, and sustain the digestive system.<sup>17</sup>

35. The best source of the essential amino acids are animal proteins such as beef, poultry, eggs, as well as plant-based proteins such as soy, quinoa, and buckwheat.<sup>18</sup>

36. Whole wheat, which is the primary ingredient in the Class Products at issue, is a “low quality protein” on account of its limited levels of *lysine* (approximately half of the amount that the Food and Agriculture Organization (“FAO”) recommends).<sup>19</sup> Notably, lysine is necessary for proper calcium absorption and the formation of collagen required for the maintenance and repair of skin, tendons, cartilage, and bones.<sup>20</sup>

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<sup>15</sup> <https://my.clevelandclinic.org/health/articles/22243-amino-acids>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> <https://www.2000kcal.cz/lang/en/values/wheat-flour-whole-grain-1382>

<sup>20</sup> <https://www.mountsinai.org/health-library/supplement/lysine#:~:text=Lysine%20appears%20to%20help%20the,enough%20lysine%20in%20their%20diet.>

1           37. As a direct consequence of its relative lack of digestibility, whole wheat  
2 has an amino acid score of .53, which means that only approximately half of the  
3 amino acids in a whole wheat bread product are absorbed and resynthesized by the  
4 human body into usable proteins.<sup>21</sup>

5           38. Accordingly, Defendant's reliance upon whole wheat as the primary  
6 source of protein in the Class Products means that in order for its "6g Protein" (12%  
7 of daily value) and "7g Protein" (14% of daily value) claims to be accurate – that is,  
8 for consumers to be able to absorb sufficient amino acids to synthesize that much  
9 protein – the unadjusted, raw number of protein in the products would have to be  
10 approximately 12g and 14g, respectively. Instead, consumers are actually obtaining  
11 approximately 3 to 3.5g of usable protein; that is, nearly one half of the advertised  
12 amount.

### 13 14 **III. Defendant's Marketing of the Class Products is False and Misleading Under** 15 **California Law**

16           39. District Courts in California have recognized that, in accordance with  
17 FDA regulations, "that when a manufacturer emphasizes a product's protein content,  
18 that statement is misleading without including information about the product's protein  
19 quality on the nutrition facts panel." *See Rausch.*, 2023 U.S. Dist. LEXIS 39231, at  
20 \*12-13; *see also Lesh v. D's Naturals, LLC*, 2023 U.S. Dist. LEXIS 43881, at \*13-14  
21 (N.D. Cal. Mar. 15, 2023); *Brown v. Nature's Path Foods, Inc.*, 2023 U.S. Dist.  
22 LEXIS 54318, at \*16 (N.D. Cal. Mar 29, 2023).

23           40. Indeed, California's Sherman Food Drug & Cosmetic Law (the "Sherman  
24 Law") expressly adopts and mirrors federal regulations regarding the labeling of  
25

26  
27 <sup>21</sup> <https://www.2000kcal.cz/lang/en/values/wheat-flour-whole-grain-1382>  
28



1 products that make protein content claims, thereby providing an independent state  
2 basis rendering Defendant's conduct deceptive and misleading.

3 41. Reasonable consumers, such as Plaintiffs and the members of the  
4 putative class, would expect that when Defendant labels the Class Products as  
5 containing "6g Protein" or "7g Protein" per serving, the products would provide them  
6 with that much usable protein when consumed. This is not the case. Instead,  
7 consumers are provided with products that yield approximately half of the advertised  
8 protein when consumed, thus rendering the prominent advertising on the front of the  
9 Class Products' packaging materially misleading.

10 42. Moreover, the average consumer lacks the sophistication, knowledge,  
11 and ability to independently ascertain the truthfulness of Defendant's advertising  
12 claims at the point of sale. Reasonable consumers have no reason to believe that the  
13 amount of protein per serving on the front label of Defendant's Class Products is not  
14 corrected or adjusted for the source protein's amino acid scores or digestibility.

15 43. Likewise, the average reasonable consumer lacks the scientific  
16 foundation to calculate the true amount of protein in the Class Products and does not  
17 have the specialized knowledge required to perform such an adjusted value  
18 calculation. As such, reasonable consumers, including Plaintiff and members of the  
19 putative class, had no choice but to rely upon Defendant's false and misleading  
20 representations as to protein content.

21 44. By deliberately omitting the adjusted daily value for protein consumption  
22 on the nutritional fact panel, while prominently making protein claims on the front,  
23 Defendant intended to, and did, mislead consumers into believing that the Class  
24 Products contain significantly more protein than they do and, thus, deceived  
25 consumers into believing they were purchasing food products that were more  
26 nutritious and healthier than other alternatives.

27 45. Defendant intended and knew that consumers would rely upon its false  
28 product labeling statements in making their purchasing decisions, especially where, as

1 here, the protein claims were prominently placed on the front label of each of the  
2 Class Products.

3 46. By falsely labeling the Class Products with misleading protein claims,  
4 Defendant is stating that the products are superior, more nutritious, and healthier than  
5 other comparable products that do not make any protein claims or those that properly  
6 make protein claims by disclosing the corrected amount of usable protein expressed as  
7 a percentage of daily value. Defendant knew and intended that consumers, relying on  
8 its false representations, would purchase the Class Products and/or pay a premium for  
9 them.

#### 10 11 **IV. Plaintiff Purchased the Class Products**

12 47. Plaintiff Joel Tafoya Perez regularly purchased Defendant's lavash and  
13 pita bread products over the course of the past three years from the Walmart  
14 Supercenter located at 12721 Moreno Beach Drive, Moreno Valley, CA 92555.

15 48. Prior to purchasing the products, Plaintiff reviewed the front product  
16 label on both the lavash and pita products which stated that the products contained "6g  
17 Protein" per serving.

18 49. Relying on the representation on the front label, Plaintiff purchased the  
19 products believing that consuming them would yield 6g of usable protein.

20 50. In making food product purchases for the first time, Plaintiff also  
21 regularly checks the nutritional fact panel on the back of the product packaging,  
22 including the percentage of daily value of protein (when available), and uses that  
23 information as basis to draw comparisons among similar products.

24 51. When purchasing Joseph's Bakery lavash and pita bread for the first  
25 time, Plaintiff reviewed the nutritional fact panel on the back of the packaging and,  
26 due to the fact that a corrected daily value of protein was not disclosed, Plaintiff had  
27 no choice but to rely upon the representation that the products contained 6g of protein,  
28

1 as advertised on the front label, and understood that to mean that the disclosed protein  
2 was in a usable form.

3 52. Plaintiff did not have any reason to believe that any of the Class Products  
4 provided less protein than the amount indicated on the front label. Plaintiff did not  
5 have the knowledge or the ability to independently calculate the corrected amount of  
6 the protein in the Protein Product prior to purchase.

7 53. Had Defendant disclosed the corrected amount of protein per serving for  
8 the lavash and pita bread products, expressed as a percentage of daily value on the  
9 nutritional fact panel on the back of the packaging, Plaintiff would not have purchased  
10 the products or would have, at a minimum, paid less for them.

11 54. As a result, Plaintiff and the class have been economically damaged by  
12 their purchase of Defendant's products (i.e., the Class Products) as a result of its false  
13 and misleading advertising.

#### 14 **CLASS ALLEGATIONS**

15  
16 55. Plaintiff bring this class action on behalf of himself and a proposed class  
17 of similarly situated persons, pursuant to Fed. R. Civ. P. 23 and seeks certification of  
18 the follow class ("the Class"):

19 All consumers who, within the applicable statute of  
20 limitations period, purchased in the State of California  
21 (whether online or in-person) Joseph's Bakery products  
22 advertised on the front label as containing a specific amount  
23 of protein per serving while excluding a corrected amount of  
24 protein, as a percentage of daily value, on the nutritional fact  
25 panel (the "Class Products"). Excluded from the class are  
26 Defendant, its parents, subsidiaries, affiliates, officers and  
27 directors, judicial officers and their immediate family  
28 members and associated court staff assigned to this case, and  
those who purchased the Class Products for resale.

1           56.    **Numerosity.** This action is appropriately suited for a class action. The  
 2 members of the Class are so numerous that joinder of all members of the Class is  
 3 impracticable. Plaintiff is informed, believes, and thereon alleges that the proposed  
 4 Class contains thousands of purchasers of the Class Product who have been damaged  
 5 by Defendant's conduct as alleged herein. The precise number of Class members is  
 6 unknown to Plaintiff.

7           57.    **Existence and Predominance of Common Questions of Law and Fact.**  
 8 This action involves questions of law and fact common to the Class. The common  
 9 legal and factual questions include, but are not limited to, the following:

- 10                   a. Whether Defendant's conduct, as alleged herein, constitutes a violation of  
 11 the "Unlawful" Prong of UCL Cal. Bus. & Prof. Code § 17200, *et. seq.*;
- 12                   b. Whether Defendant labeled, advertised, marketed, and/or sold the Class  
 13 Products with specific protein content claims on the front label while  
 14 failing to disclose the corrected amount of protein, expressed as a  
 15 percentage of daily value, on the back nutritional fact panel;
- 16                   c. Whether Defendant's labeling, advertising, marketing, and/or selling of  
 17 the Class Products was and/or is false, fraudulent, deceptive, and/or  
 18 misleading;
- 19                   d. Whether representations regarding the number of grams of protein in the  
 20 Class Products are material to a reasonable consumer;
- 21                   e. Whether Class members are entitled to payment of actual, incidental,  
 22 consequential, exemplary and/or statutory damages, plus interest thereon  
 23 and, if so, the nature and scope of such relief.

24           58.    **Typicality.** Plaintiff's claims are typical of the claims of the members of  
 25 the Class, because, *inter alia*, all Class members have been injured through the  
 26 uniform misconduct described above and were subject to Defendant's blatant  
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1 misrepresentations that the Class Products offered consumers far more usable protein  
2 per serving than they actually did.

3 59. Moreover, Plaintiff's claims are typical of the Class members' claims.  
4 Plaintiff is advancing the same claims and legal theories on behalf of himself and all  
5 members of the Class.

6 60. **Adequacy of Representation.** Plaintiff will fairly and adequately  
7 protect the interests of the members of the Class. Plaintiff purchased the Class  
8 Products, and was harmed by Defendant's deceptive misrepresentations. Plaintiff has  
9 therefore suffered an injury in fact as a result of Defendant's conduct, as did all Class  
10 members who purchased the Class Products. Plaintiff has retained counsel who are  
11 adept, sophisticated, and experienced in the field of class action litigation, and have  
12 adequate resources to advocate on behalf of the class fully and zealously.

13 61. **Superiority.** A class action is superior to other methods for the fair and  
14 efficient adjudication of this controversy. The damages or other financial detriment  
15 suffered by individual Class members is relatively small compared to the burden and  
16 expense that would be entailed by individual litigation of their claims against  
17 Defendant. It would be virtually impossible for a member of the Class, on an  
18 individual basis, to obtain effective redress for the wrongs done to him or her.  
19 Further, even if the Class members could afford such individualized litigation, the  
20 court system could not. Individualized litigation would create the danger of  
21 inconsistent or contradictory judgments arising from the same set of facts.  
22 Individualized litigation would also increase the delay and expense to all parties and  
23 the court system from the issues raised by this action. By contrast, the class action  
24 device provides the benefits of adjudication of these issues in a single proceeding,  
25 economies of scale, and comprehensive supervision by a single court, and presents no  
26 management difficulties under the circumstances here.

27 62. Plaintiff seeks monetary damages, including statutory damages on behalf  
28 of the entire Class, and other equitable relief on grounds generally applicable to the



entire Class. Unless a Class is certified, Defendant will be allowed to profit from its deceptive practices, while Plaintiff and the members of the Class will have suffered damages.

**COUNT I**  
**Violation of the Consumer Legal Remedies Act (“CLRA”)**  
**Cal. Civ. Code § 1750, *et. seq.***

63. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 through 62 as though fully set forth herein.

64. At all relevant times, Plaintiff was a “consumer” as defined by Cal. Civ. Code § 1761(d).

65. At all relevant times, the Products were “goods” as defined by Cal. Civ. Code § 1761(a).

66. At all relevant times, Defendant was a “person” as defined by Cal. Civ. Code § 1761(c).

67. Cal. Civ. Code § 1770(a) prohibits “unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]”

68. Plaintiff and members of the class are reasonable consumers who expected the Products to have the characteristics as represented.

69. As a result of Defendant’s conduct and unfair or deceptive acts or practices, Plaintiff Tafoya Perez and the class suffered actual damages in that the Products are not as advertised and are not worth the amount paid, and Defendant has deprived Plaintiff and the class of the benefit of their bargain.

70. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing by certified mail sent on or about November 10, 2023, of its violations of § 1770 described above and demanded that it correct the problems associated with the actions detailed above and give notice to all affected consumer of Defendant’s intent to do so.

1 If Defendant does not agree to rectify the problems identified and give notice to all  
 2 affected consumers within 30 days of the date of written notice, Plaintiff will amend  
 3 this Complaint to seek actual, punitive and statutory damages, as appropriate.

4  
 5 **COUNT II**  
 6 **Violation of the False Advertising Law (“FAL”)**  
 7 **Cal. Bus. & Prof. Code § 17500, *et seq.***

8 71. Plaintiff hereby incorporates by reference the allegations contained in  
 9 Paragraphs 1 through 70 as though fully set forth herein.

10 72. Defendant made untrue, false, deceptive, and/or misleading statements in  
 11 connection with the advertising and marketing of the Class Products.

12 73. Defendant made representations and statements that led reasonable  
 13 consumers to believe that the Class Products they were purchasing contained more  
 14 grams of protein per serving than they actually provided when consumed. Defendant  
 15 had a duty under California and federal law to disclose the corrected amount of  
 16 protein per serving in the nutritional fact panel since it had made a protein claim on  
 17 the front label of the Class Products.

18 74. Plaintiff and the Class members relied to their detriment upon  
 19 Defendant’s false, misleading, and deceptive advertising and marketing practices. Had  
 20 Plaintiff and the members of the Class been adequately informed and not intentionally  
 21 deceived by Defendant, they would have refrained from purchasing the Class Products  
 22 or paid less for them.

23 75. Defendant’s acts and omissions are likely to deceive the general public.

24 76. Defendant engaged in these false, misleading, and deceptive advertising  
 25 practices to increase its profits. Accordingly, Defendant has engaged in false  
 26 advertising, as defined and prohibited by Section 17500, *et seq.* of the California  
 27 Business and Professions Code.  
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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment against Defendant as follows:

A. Certifying this action as a class action as soon as practicable, with the Class as defined above, designating Plaintiff as the named Class representative, and designating the undersigned as Class Counsel.

B. An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or untrue or misleading advertising, plus pre-and post-judgement interest thereon;

C. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all causes of action or issues so triable.

DATED: November 13, 2023

Respectfully submitted,



Michael D. Braun

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